

MEMORANDUM OF AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

SST, INC.

**TO FURNISH THE CITY OF SAN DIEGO WITH GUNSHOT
DETECTION EQUIPMENT AND ALERTING SOFTWARE.**

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is entered into by and between the City of San Diego, a municipal corporation (City), and SST, Inc. (Contractor).

RECITALS

WHEREAS, City wishes to retain Contractor to furnish gunshot detection equipment and alerting software as further described in the Services Agreement and Purchase Agreement (collectively, "Services"), attached hereto as Exhibit C and D;

WHEREAS, Contractor has the expertise, experience, and personnel necessary to provide the Services;

WHEREAS, City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services;

WHEREAS, this MOA, the Master Use and Occupancy Permit, Services Agreement and Purchase Agreement will form part of the body of the Contract; and

WHEREAS, this agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(e) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a);

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of the Contract between the City and Contractor is described in the Contract Documents (Section 2.1).

1.2 Term. The Contract shall be for a period of one (1) year beginning on the Effective Date. City may, in its sole discretion, unilaterally exercise an option to extend the Contract for four (4) additional one (1) year period(s) under the terms and conditions herein stated beginning on the anniversary of the Effective Date. The one (1) additional one (1) year option period will be exercised within sixty (60) days prior to the expiration of the current Contact or option period. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

1.3 Effective Date. The Contract shall be effective on the date it is executed by the last Party to sign this MOA, and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE II **CONTRACT DOCUMENTS**

2.1 Contract Documents. The Contract between the Parties consists of this MOA and all the documents listed below, which are attached hereto as Exhibits A-D and incorporated in full herein, and which together contain all the terms and conditions of this Contract (collectively referred to as "Contract Documents"). In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in section 2.1.1 having the highest precedence). Provisions of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

Order of Precedence:

- 2.1.1 This MOA
- 2.1.2 Non-Disclosure Agreement (Exhibit "A")
- 2.1.3 Master Use and Occupancy Permit (Exhibit "B")
- 2.1.4 ShotSpotter Flex Services Agreement (Exhibit "C");
- 2.1.5 ShotSpotter's Purchase Agreement (Exhibit "D")

The Contract Documents constitute the entire understanding between the City and the Contractor with respect to the subject matter and transactions contemplated by the Parties. The Contract Documents supersede any and all prior agreements, understandings, promises, or inducements with respect to the subject matter and transactions contemplated by the Parties.

2.2 Submittals Required with the Contract. Contractor is required to submit the following documentation in accordance with this Contract. Contractor's failure to provide City with the required submittals listed below together with the executed Contract shall delay City's execution of the Contract and the commencement of work and payments to Contractor.

- Insurance Certificates with all endorsements (reference Article VII)
- Taxpayer Identification Form W-9, if not currently on file (<http://www.irs.gov/formspubs/lists>)
- EOC Form Contractors Certification of Pending Actions (Attachment 1)
- Contractors Standards Form (Attachment 2)

ARTICLE III **CONTRACT ADMINISTRATOR**

3.1 Contract Administrator for the City. The San Diego Police Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

San Diego Police Department
Operational Support
Attn: Daniel Meyer, Sergeant

1401 Broadway San Diego, Ca. 92101
(619) 531-2493
Meyerd@pd.sandiego.gov

3.2 Contract Administrator for SST.

~~COMPANY~~ *SST, Inc.*
~~Attn: NAME, TITLE~~ *Sonya Snickler, VP Finance + Controller*
~~ADDRESS~~ *7979 Gateway Blvd., Suite 210, Newark, CA 94560*
~~TELEPHONE NUMBER~~ *510-794-3134*
~~EMAIL~~ *accounting@shotspotter.com*

3.3 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the above designated Contract Administrator. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Any party entitled or required to receive notice under this Contract may, by like notice, designate a different address to which notices shall be sent.

ARTICLE IV COMPENSATION

4.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with the terms and conditions specified this Contract. The Parties agree to the following:

4.1.1 City will pay a one-time fee for the following:

- 4.1.1.1** Initial training fee not to exceed \$10,000.
- 4.1.1.2** Application Program Interface (API) license fee that shall not exceed \$19,000.
- 4.1.1.3** Setup fee in an amount not to exceed \$10,000 per square mile for the initial 3.62 square miles.

4.1.2 City will pay the following for subscription service for 3.62 miles:

- 4.1.2.1** First year: \$65,000 per square mile
- 4.1.2.2** Second option year: \$65,000 per square mile (not to exceed \$235,300)
- 4.1.2.3** Third option year: \$68,250 per square mile (not to exceed \$247,065)

4.1.2.4 Fourth option year: \$71,662.983 per square mile (not to exceed \$259,420)

4.1.2.5 Fifth option year: \$75,245.856 per square mile (not to exceed \$272,390)

4.1.3 Contractor shall give and City shall receive a \$55,200 discount that will be applied towards the first year's total costs.

4.1.4 City and Contractor agree that a one-time, non-refundable permit processing fee and an annual use fee for the Use and Occupancy Permit (Exhibit B) will not be charged to Contractor during the first year of the Contract, and the Parties further agree that such fees may be negotiated and incorporated into this Contract if the City exercises any of the option years as described in Section 1.2.

4.2 Invoices. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of services provided, and an amount due. Contractor shall submit invoices to the following address:

San Diego Police Department
Fiscal Operations/Accounts Payable
Mail Station 715
1401 Broadway
San Diego, CA 92101

4.3 Payments. Payment for the service initiation and startup, all subscription fees, and any and all optional service fees are not due until invoiced. Payment shall be made within thirty (30) days after City's receipt of a properly prepared and approved invoice. City will notify Contractor within ten (10) business days of receipt of an invoice if it is not properly prepared. The schedule of payments is set forth as follows:

4.3.1. First year: 50% after execution of this Contract; 50% upon ShotSpotter Flex "live" status, as signed off and approved by City

4.3.2 Second through Fifth option years: 100% of subscription fees for one year after execution of an option year

4.4 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

ARTICLE V RIGHT TO SUSPEND OR TERMINATE

5.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. Unless already paid in full, City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

5.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, in applicable, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

5.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to perform the services or perform the services within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

5.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

5.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

5.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or

demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

5.5 Contractor's Right to Payment Following Contract Termination.

5.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

5.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 5.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

5.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE VI ADDITIONAL CONTRACTOR OBLIGATIONS

6.1 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

6.2 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

6.3 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records

available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

6.3.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

6.4 Lenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. City will not be responsible for any costs associated with obtaining sensor site permissions and leasing sensor site locations on private property. City will allow Contractor to place sensors on City-owned property, subject to the terms and conditions of the Master Use and Occupancy Permit attached hereto as Exhibit B; provided that City-owned property exists, in locations reasonably acceptable to the Contractor as sensor sites, and further provided, that City, in its sole discretion determines that the property is available and appropriate for such use. Also, the Contractors shall be responsible for complying with any laws or regulations requiring the use of licensed contractors to perform parts of the work.

ARTICLE VII **INDEMNIFICATION AND INSURANCE**

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall not begin any performance under this Contract, including any work on any portions of the Permit Areas as defined in the Master Use and Occupancy Permit (Exhibit "B"), until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein and the

Specifications. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Specifications. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. The requirements of this section do not apply to contracts for goods, unless otherwise required in the Contract Specifications.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

Contractor shall maintain insurance coverage at its own expense as follows:

7.2.1 Commercial General Liability. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

7.2.2 Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

7.2.3 Workers' Compensation. For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

7.3 Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

7.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

7.5.1 Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

7.5.2 Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

7.5.3 Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

7.6 Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract, without overhead, profit, or any other markup.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE VIII

CITY-MANDATED CLAUSES AND REQUIREMENTS

8.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

8.1.1 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

8.1.2 Non-Discrimination Requirements.

8.1.2.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

8.1.2.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity,

sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

8.1.2.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

8.1.3 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

8.1.4 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

ARTICLE IX **CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

9.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

9.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

9.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

ARTICLE X **DISPUTE RESOLUTION**

10.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

10.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

10.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, and agreed to by the parties, shall be borne equally by the parties, unless they agree otherwise.

10.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

10.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XI **MISCELLANEOUS**

11.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

11.2 Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of California.

11.3 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

11.4 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract,

shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

11.5 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

11.6 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

11.7 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

11.8 Standard of Conduct. Contractor and its employees shall, at all times, conduct themselves and Contractor's operations in a creditable manner and in accordance with industry standards.

11.9 Joint and Several Liability. If Contractor is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of Contractor under this Contract

11.10 California Public Records Act. City shall determine, in its sole discretion, whether information provided to City by Contractor pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act (CPRA). Contractor shall hold City, its elected officials, officers and employees harmless for City's disclosure of any such information in response to a request for information under the CPRA.

11.11 Survival. Any obligation under this Contract that requires a party's performance of that obligation after the expiration or earlier revocation or termination of this Contract shall survive such expiration, revocation, or termination.

11.12 Exhibits Incorporated. All exhibits referenced in this Contract are incorporated into the Contract by this reference.

ARTICLE XII COUNTERPARTS

12.1 Counterparts. This Contract may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

SST, INC.
Contractor

BY: Sonya Strickler

Print Name: Sonya Strickler

Title: VP Finance Controller

9/14/16

DATE SIGNED

CITY OF SAN DIEGO
A Municipal Corporation

BY: Kristina Pennington

Print Name: Kristina Pennington

Title: DIRECTOR

Purchasing & Contracting Department

9/21/2016

DATE SIGNED

Approved as to form this 23 day of
September, 20 16.

JAN I. GOLDSMITH, City Attorney

BY: J. Goldsmith

Deputy City Attorney